

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN PEROTTI,

Plaintiff,

v.

HELEN MARLBERRY, *et al.*,

Defendants.

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Case No. 05-60172

Hon. John Corbett O'Meara  
Magistrate Judge R. Steven Whalen

**ORDER ADOPTING REPORT AND RECOMMENDATION**

Before the court is Magistrate Judge R. Steven Whalen's December 10, 2012 report and recommendation. No objections were filed. The magistrate recommends that the court grant Plaintiff's request for a voluntary dismissal of Warden Tapia, with prejudice. Having reviewed the report and recommendation and relevant legal authority, the court ADOPTS the report and recommendation.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for voluntary dismissal [Doc. #169] is GRANTED; Defendant's motion to dismiss [Doc. #154] is DENIED AS MOOT; Plaintiff's motion to convert Defendant's motion to dismiss to a motion for summary judgment [Doc. #158] is DENIED AS MOOT; and Plaintiff's motion for a certificate of appealability [Doc. #174] is DENIED.

IT IS FURTHER ORDERED that Plaintiff's complaint is DISMISSED WITH PREJUDICE as against Warden Tapia.

s/John Corbett O'Meara  
United States District Judge

Date: February 15, 2013

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, February 15, 2013, using the ECF system and/or ordinary mail.

s/William Barkholz  
Case Manager